



May 26, 2016

Edward L. Golding  
Principal Deputy Assistant Secretary  
Office of Housing  
Department of Housing and Urban Development  
451 7<sup>th</sup> St. SW  
Washington, DC 20410

Helen R. Kanovsky  
General Counsel  
Department of Housing and Urban Development  
451 7<sup>th</sup> St. SW  
Washington, DC 20410

RE: HUD's Preemption Policy Regarding its Manufactured Housing Construction and Safety Standards

Dear Mr. Golding and Ms. Kanovsky:

On behalf of the Manufactured Housing Institute (MHI), I wanted to bring to your attention a growing trend of municipalities using zoning ordinances to mandate manufactured housing construction standards beyond the HUD Code and as a result effectively "zoning out" manufactured housing. Unchecked, this trend could reduce the supply of critically needed affordable housing across the country. We ask that HUD develop a more robust pre-emption policy based on the 2000 Manufactured Housing Improvement Act and take a more proactive role in discouraging these efforts.

The Manufactured Housing Institute (MHI) is the national trade organization that represents all segments of the factory-built housing industry. MHI members include manufacturers, lenders, home retailers, community owners, suppliers and others affiliated with the industry. MHI's membership also includes 50 affiliated state organizations.

There are numerous examples where municipalities have used arbitrary land planning to adversely impact the placement of manufactured homes. The City of Pearl, MS presents one striking example: The municipality attempted to use zoning requirements to impact what type of homes could replace ones that have been moved from a land lease community, with the result of making it nearly impossible to replace units. While HUD has been supportive of efforts to mitigate the City of Pearl's efforts to use zoning against manufactured housing, the municipality is still looking for regulatory options that effectively limit manufactured housing. Pearl's efforts would have denied housing for working families and reduced the community's value. Increasingly, we are hearing about cases like these all across the country. MHI has been partnering with state manufactured housing associations to challenge these ordinances. We urge HUD to increase its reviews of local ordinances and issue public statements in instances where pre-emption is clearly warranted. We are concerned that without affirmative steps taken by HUD to pre-empt these efforts, these local ordinances will continue to multiply, and the supply of critically needed affordable housing will be reduced.

We believe that HUD has the authority to move beyond a case-by-case approach to this challenge. The Manufactured Housing Improvement Act of 2000 (the Amended Act) significantly strengthened the preemptive language originally contained in the National Manufactured Housing Construction and Safety Standards Act of 1974. One of the purposes of the Amended Act is to "ensure

uniform and effective enforcement of Federal construction and safety standards for manufactured homes.” The amended statute also specifies; “Federal preemption....shall be broadly and liberally construed to ensure that disparate State or local requirements or standards do not affect the uniformity and comprehensiveness of the standards...” Yet, despite this broadened authority that was granted in 2000, the last time HUD updated its guidance in this area was in 1997. Though this guidance prohibited municipalities from using manufactured housing construction and safety code standards that are different from the HUD code to regulate or exclude manufactured housing, we believe the Amended Act largely renders this guidance obsolete.

It is past time for HUD to revise and update its 1997 policy on pre-emption to affirm that local zoning actions cannot be used to “affect the uniformity and comprehensiveness” of the federal pre-emptive standard and to ensure that no state or municipality “adopt or enforce standards that have the effect of precluding or restricting manufactured homes from being installed as permanent residences on any site zoned for residential uses.” Further, state and local governments should only subject a manufactured home and the site upon which it is placed to the same development standards as a single family dwelling. Additionally, there may be cases, such as in Richmond VA, where aggressive code enforcement, or changes to locally enforced manufactured housing construction standards, could adversely impact protected classes under Fair Housing statutes.

As further background, we have attached our correspondence with the Office of Manufactured Housing Programs (OMHP) and the Office of the General Counsel (OGC) on these matters in June 2015, December 2015, and March of 2016. We have not received any response to these letters. In addition, below is a table of sample cases from municipalities where zoning requirements are having an adverse impact on manufactured home communities.

We look forward to working with you and your team at HUD to ensure that local zoning regulations do not adversely impact manufactured housing and the families seeking affordable homeownership options.

Sincerely,

A handwritten signature in black ink that reads "Lesli Gooch". The signature is written in a cursive, flowing style.

Lesli Gooch, Ph.D.  
Senior Vice President, Government Affairs & Chief Lobbyist

CC: Pamela Danner, Administrator, Office of Manufactured Housing Programs  
Rick Robinson, MHI General Counsel/Senior Vice President, State & Local Affairs

Enc: Correspondence between MHI, Office of Housing and Office of the General Counsel

### Examples of Local Ordinances and Actions Adversely Impacting Manufactured Housing Communities

Jurisdiction	Zoning Proposal	Impact on Manufactured Homes
Pearl, MS	After losing MS Supreme Court case on issue below, adopted stringent occupancy ordinance	New manufactured homes could be sited in parks, but not occupied
Pearl, MS	Zoning official administratively changes interpretation of "non-conforming use" defining use on a lot-by-lot basis (as opposed to taking into account the nature of the entire park property).	Under this change in interpretation, when an older home is removed from the park, it cannot be replaced. The change in interpretation comes without notice or hearing from the city. Supreme Courts in Mississippi struck down the interpretation, but only after a costly court battle.
Lodi, OH	Same as above	Same as above. See, Sunset Estate Properties, LLC v. Village of Lodi, Ohio
Franklin County, KS	All manufactured homes must meet the 1994 HUD Code	Owners of homes manufactured to previous HUD Code unable to sell.
Augusta, AR	Using convoluted definitions, a ban on all MH and modular from R-1	Result is a total ban
Harker Heights, TX	Building Code requires 12.5 feet between homes. New ordinance requires 35 foot between manufactured homes.	This new standard will allow a park owner to only replace every other outdated home, leaving an empty lot in between.
Lowell, MA	Mayor demands properly sited HUD Code home be removed because "If you had 20 of these, it would look like a trailer park."	ongoing
Washington, IN	New ordinance requires signed approval of surrounding landowners to site MH on private property	If challenged, likely unconstitutional
Huntsville, TX	Total ban on new mobile homes within city limits (including single placement on private property) with existing homes grandfathered.	Ordinance dropped when local MH retailers speak out at city council meeting. New ordinance being drafted with age restrictions, lot size requirements and set-backs. As the Mayor has openly said getting rid of MH is his top priority, we don't expect the new draft to be much better.
Chandler County, GA	City denies permit for placement of second manufactured home on six acre tract based upon zoning density requirement of 5 acres for each manufactured home.	Family could not subdivide lot for a home for their children.
Westin, WI	Held up license renewals for all four communities in the town after an	Harassment of communities to conduct code enforcement for city

	inspection showed many homes with “code violations” such as dented skirting, children’s toys in the yard, bad steps, all of which were on the lease pads of private homes not owned by the community.	
Greene County, WI	County takes administrative position that a HUD Code home must have a basement in order to be considered a dwelling.	Installation of newly purchased home denied.
Richmond, VA	Rojas v. City of Richmond	Case alleges that aggressive enforcement of city maintenance code on MHPs has disparate impact on minority families in Richmond.
Mohave County, AZ and other jurisdictions too numerous to list	7 year age restrictions – homes manufactured prior. A growing local trend, the Mohave time frame is the shortest MHI has seen to date.	Owners unable to sell existing homes. In AZ, the SAA and Attorney General claim preemption applies